

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF TEXAS

3 HOUSTON DIVISION

4 DM ARBOR COURT, LTD. § CASE NO. 4:18-CV-1884

§ HOUSTON, TEXAS

5 VERSUS

§ MONDAY,

§ APRIL 11, 2022

6 THE CITY OF HOUSTON, TEXAS § 9:58 A.M. TO 10:29 A.M.

7 MOTION CONFERENCE (VIA ZOOM)

8 BEFORE THE HONORABLE CHRISTINA A. BRYAN
9 UNITED STATES MAGISTRATE JUDGE

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12 APPEARANCES: SEE NEXT PAGE

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APPEARANCES (VIA ZOOM) :

FOR THE PLAINTIFF:

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1 **HOUSTON, TEXAS; MONDAY, APRIL 11, 2022; 9:58 A.M.**

2 THE COURT: Good morning, everyone. This is Judge
3 Bryan.

4 MR. GROSDIDIER: Good morning, Judge.

5 MS. ZINKHAN: Morning.

6 MR. CHAIKEN: Morning, Judge Bryan.

7 THE COURT: All right. I've reviewed the letters
8 that I've received. Because we have a -- we have a court
9 reporter on the line, right, Melissa, Ms. Morgan?

10 THE CLERK: Yes, ma'am, yes, Judge.

11 THE COURT: Or an ERO, okay, great.

12 Counsel, announce your appearances, please.

13 MR. GROSDIDIER: Pierre Grosdidier for the City of
14 Houston.

15 MS. ZINKHAN: Lydia --

16 MR. CHAIKEN: Kenneth --

17 MS. ZINKHAN: -- Zinkhan for the City of Houston
18 also.

19 MR. CHAIKEN: Oh, apologies, I didn't realize
20 Ms. Zinkhan was there. Kenneth Chaiken for the Plaintiff.

21 THE COURT: All right. And this conference is
22 regarding Docket Number 172 and 180, which are a first and
23 second motions to exclude the testimony of Monica Sussman.
24 I have reviewed them. I have reviewed the responses. And
25 what I really want to take up is Docket Number 172, the

1 first motion to exclude, because I think that will eliminate
2 really the second motion.

3 So, Mr. Chaiken, if you intend to have Ms. Sussman
4 testify at trial, she needs to be deposed. Are you --

5 MR. CHAIKEN: I don't have a problem -- oh, I'm
6 sorry, I'm sorry.

7 THE COURT: Well, are you intending to have her
8 testify as a witness at trial?

9 MR. CHAIKEN: I am. And I don't have a problem
10 with her being deposed.

11 THE COURT: Well, here's what else I'll say. If
12 you're intending to bring her -- I mean, look, I've read the
13 letters. And we all know the history of this case. Counsel
14 have historically not been able to reach agreements on
15 various issues, and this seems like one that you should be
16 able to reach an agreement on.

17 And so I -- what I want to do is instead of having
18 everybody cast stones, I want to get to the bottom of it and
19 just get it resolved.

20 So, Mr. Chaiken, if you're planning to bring her
21 as a witness at trial, you need to assist in the scheduling
22 of her deposition. And if that means having, you know,
23 having -- being able to accept service of subpoena or
24 something else, then you need to do that because we're not
25 going to play games where you're going to bring this person

1 as a witness but yet, you know, make it as hard as possible
2 to get her deposed before the discovery cutoff.

3 So let me hear about the -- you know, you're
4 telling me you have no problem having her deposed. But
5 what's the issue, Mr. Grosdidier, if Mr. Chaiken actually is
6 not opposed to her deposition; what's the issue?

7 MS. GROSDIDIER: Well, thank you, Judge. The
8 issue is I've offered any day of the week of April 25th, and
9 I've been told, no, that's not feasible. And so I've said,
10 okay, well let's slip this into May, and I've been told,
11 well, no, because the cutoff for the discovery is
12 April 29th.

13 And I'm perfectly making -- you know, I think we
14 should make an exception for this deposition. If it needs
15 to happen in May, it can happen in May.

16 THE COURT: Mr. Chaiken, what's your response to
17 that?

18 MR. CHAIKEN: Well, I have two responses. First,
19 contrary to what's published to the Court, I have been
20 trying to arrange the deposition at Mr. Grosdidier's
21 request. I don't control the witness. She has her own
22 counsel. And three dates have been offered --

23 THE COURT: Well, hold on, can I stop you there
24 right now --

25 MR. CHAIKEN: Yeah.

1 THE COURT: -- just for a second?

2 MR. CHAIKEN: Yeah.

3 THE COURT: You're telling me you don't control
4 the witness, this is a witness who's out of subpoena range,
5 and you're telling me you --

6 MR. CHAIKEN: Right.

7 THE COURT: -- intend to call her. So although
8 you don't technically control her, if you intend to call her
9 as a witness, you need to make sure she gets deposed.

10 MR. CHAIKEN: Okay. So what I've done is, okay, I
11 have, at the request of Mr. Grosdidier no less, I've talked
12 to her counsel and I've asked them to provide dates on which
13 the witness is available. Three dates have been provided,
14 all within the time period that Mr. Grosdidier wanted. They
15 are the 19th, the 20th, and the 21st.

16 We have depositions scheduled on the -- on part of
17 the 19th, which would be a rollover from the start of the
18 deposition. The 20th, we don't have anything scheduled in
19 this case. The 21st, we have a deposition in the afternoon.

20 The deposition of Ms. Sussman, at least from my
21 perspective, is going to be a very, very short deposition.

22 Mr. Grosdidier has insisted on two things. Number
23 one, he wants a deposition during the week of April 25th. I
24 don't know why he can't do it on a date that the witness has
25 made herself available.

1 He is -- secondly, he's suggested that maybe we
2 move into May, which I don't have a problem doing, it's just
3 we have discovery cutoff. And if we're giving an exception
4 to the discovery cutoff, that's fine, too.

5 But what it's going to come down to ultimately is
6 a question of where the witness is going to be and where the
7 lawyers are going to be during the deposition. The witness
8 wants to do a deposition by Zoom, and Mr. Grosdidier insists
9 on it being a live deposition.

10 And so I don't know how the Court can deal with
11 that issue because if he wants a deposition in a manner
12 other than the way the witness is willing to voluntarily
13 give it, then he would have to serve a subpoena. And, you
14 know, we're trying to make it happen.

15 So I don't know why we couldn't do the deposition
16 on the afternoon of the 19th, some time during the 20th, or
17 some time on the 22nd in the morning. And I'm even willing
18 to move depositions around that are scheduled on that date
19 -- on two of those dates in this case, if it will
20 accommodate it. So I'm doing everything I can here.

21 THE COURT: Why is the witness not -- what's the
22 issue with the week of the 25th?

23 MR. CHAIKEN: Honestly, Judge, I don't know. Her
24 lawyer has communicated that she doesn't have availability
25 that week. Mr. Grosdidier responded, well what about in

1 May, he said I can provide dates in May. I said, I don't
2 have a problem with that as long as we deal with the
3 discovery cutoff question. And that's how we've left it.

4 And instead, what Mr. Grosdidier did, was he --
5 you know, he tried to have a subpoena served on -- for the
6 25th. I don't know what her lack of availability is.

7 I honestly -- I haven't spoken to Ms. Sussman
8 since sometime early in March, at which time we set up her
9 deposition thinking we were going to take it and we were
10 going to need a trial deposition.

11 And since then, largely because communications
12 from Mr. Grosdidier, she has counsel. And I invited him to
13 participate on today's call, I'll tell you, but he told me
14 that he had a meeting with the mayor of -- I don't know
15 whether he's in Rochester or Buffalo, forgive me, but he's
16 in one of those two places and so he wasn't able to join us.
17 So I don't know --

18 THE COURT: All right.

19 MR. CHAIKEN: -- why she's not available the week
20 of the 25th.

21 THE COURT: All right. Mr. Grosdidier, what's the
22 issue with April 19, 20, 21, or 22?

23 MR. GROSDIDIER: Judge, if I may, I want to
24 correct something. The subpoena was done last -- was
25 attempted last Tuesday, which was before we had any of these

1 conversations. So it was not like we had discussions and
2 then I subpoenaed. It was more like --

3 THE COURT: All right.

4 MR. GROSDIDIER: -- we're not going to give you
5 dates and so you have to subpoena. And I did, and they
6 evaded the subpoena. So there's a little nuance here.

7 On Monday we have a deposition. On Tuesday I have
8 deposition preparations and I have an important meeting. On
9 -- excuse me. On Tuesday, we have deposition, and that's
10 the 19th. On Wednesday, I have an important meeting and I
11 have deposition preparation for the next day. And on
12 Thursday, the 21st, I have deposition.

13 And, honestly, I don't want to be tied with just a
14 very short deposition. I have --

15 THE COURT: Understood.

16 MR. GROSDIDIER: -- seven hours --

17 THE COURT: Understood, understood. All right.
18 Here's what's going to happen.

19 The -- this deposition is going to be taken. It
20 is going to be scheduled at the convenience of the witness.
21 The -- it can occur outside the discovery cutoff. However,
22 this deposition is the only discovery that will take place
23 outside the discovery cutoff. I am not extending the
24 discovery deadline for any other purpose or reason.

25 As -- what is the -- Mr. Chaiken, why does the

1 witness want this deposition to take place by Zoom?

2 MR. CHAIKEN: Well, I could tell you what her
3 counsel has told me. She is afraid of Mr. Grosdidier, who
4 she feels has been harassing and bullying her. That's all I
5 can tell you. I'm just reporting.

6 THE COURT: All right.

7 MR. GROSDIDIER: Where's the evidence of that,
8 Judge?

9 MR. CHAIKEN: And I have --

10 THE COURT: Hold --

11 MR. CHAIKEN: -- offered not to --

12 THE COURT: Hold on.

13 MR. CHAIKEN: I've offered not to be present as
14 well.

15 THE COURT: Hold on. She's represented by
16 counsel. I'm confident that her counsel can protect her to
17 the extent she needs protecting from Mr. Grosdidier. I am
18 -- that's not a reason not to have a deposition in the
19 normal manner of in-person deposition.

20 If for whatever reason the parties agree to allow
21 her to appear by Zoom, there will be no one present in the
22 room with her. She will be alone in the room. Her counsel
23 can be present on Zoom, both of you can be present on Zoom,
24 but there will be no one in the room with her other than a
25 neutral videographer or court reporter, if you are going to

1 have a court reporter/videographer present in the room.

2 I will also state that any chat function or any
3 other type of communication device will not be used during
4 her testimony.

5 Are we clear on the parameters if the deposition
6 has to go forward by Zoom?

7 MR. GROSDIDIER: I am, Judge. But does this mean
8 that I cannot have a physical deposition?

9 THE COURT: I'm not saying you cannot have a
10 physical deposition. I think if the issue with her wanting
11 not to have an in-person deposition is because she feels
12 bullied, that I am not persuaded by that. She has -- she's
13 represented by counsel. She's also an attorney.

14 If she's planning to come to Houston to testify
15 and she's outside subpoena range, she can sit for an in-
16 person deposition.

17 There -- how -- what I'm saying is there could be
18 a situation where someone could come down with COVID or
19 something else, and I don't want the deposition to be put
20 off as a result of that. So if you and Mr. Chaiken come
21 down with COVID, I want the deposition to go forward to the
22 extent you're able to. Do it by Zoom. But I -- those are
23 the parameters for Zoom.

24 She will be in a room, her counsel will not be in
25 the room with her. You can have a neutral videographer

1 present in the room with her to ensure the integrity of the
2 deposition process. And she will not be communicating by
3 electronic method with her attorney or anyone else during
4 the deposition.

5 MR. GROSDIDIER: Understood, Judge, and thank you.

6 THE COURT: I mean obviously on a break or
7 something she's entitled to speak to her attorney. But I
8 don't want -- I've had situations come up where people are
9 receiving chat messages during Zoom depositions. And I am
10 preempting any risk of that by setting these parameters.

11 MR. CHAIKEN: Well, I mean, Judge, I'm assuming, I
12 mean, I -- I mean, she's not here on this call and so the --
13 you know, the question is, you know, I'll relay what you're
14 saying. I'm not chatting with her. I mean, I'm sure her
15 attorney's going to want to communicate with her however he
16 wants to communicate.

17 But I think part of the problem is that -- as well
18 is that -- Mr. Flannigan is her attorney, by the way, Brian
19 -- I think it's Brian Flannigan.

20 So as I understand it, Mr. Grosdidier can take it
21 live. And Mr. Flannigan has to travel to wherever the
22 witness is or wherever the deposition is being taken, as
23 does -- as do I and as does Mr. Grosdidier.

24 I don't -- I mean, this is a witness that
25 Mr. Grosdidier is simultaneously seeking to exclude

1 altogether. He doesn't really want her deposition.

2 But, I mean, does the cost of traveling to the
3 witness at this point, have her counsel be there as well,
4 you know, does it militate in favor of requiring a live
5 deposition?

6 And quite honestly, I can't accept a subpoena for
7 her. So, I mean, and I can't waive her position on wanting
8 a subpoena. So --

9 THE COURT: Agreed, agreed.

10 MR. CHAIKEN: -- what am I supposed to --

11 THE COURT: I agree you can't accept a subpoena
12 for her. But if she's going to voluntarily come and testify
13 at trial, she's going to be deposed. And if she's going to
14 come --

15 MR. CHAIKEN: No, I get it.

16 THE COURT: -- and voluntarily testify at trial,
17 I'm saying that Mr. Grosdidier is entitled to depose her.
18 And but prior to COVID, those depositions occurred in-
19 person.

20 Everybody can travel to D.C. where the witness is
21 located. She has chose an attorney, an attorney who's not
22 located in her city. That's her choice, that's her
23 obligation.

24 If she doesn't want to be deposed, she won't come
25 and testify at trial. That's pretty simple.

1 MR. CHAIKEN: Well, I -- it's not that she doesn't
2 want to be deposed. It's just that I'm just reporting what
3 her lawyer has offered. Her lawyer's offered dates and he's
4 offered to accept a subpoena, but they want it done by Zoom,
5 okay?

6 I mean, I guess can they -- you know, can they
7 file a, you know, a -- I mean, I guess if they accept a --
8 I guess if they accept service, they can rely on Rule 45.

9 I mean, I'm just -- my concern is I don't control
10 this lady. I want -- I don't even know at this point, given
11 a number of other things that are happening in the case,
12 whether her testimony is even going to be needed. I'm just
13 trying to -- I'm trying to help, you know, get it done.

14 I just think to require it to happen live -- this
15 is what I expect is going to happen, okay? Mr. Grosdidier's
16 going to have to serve a subpoena, okay, because I can't
17 accept it. So I don't know whether witness will accept it,
18 not accept it --

19 THE COURT: Well, are you telling me her counsel's
20 not going to accept a subpoena on her behalf?

21 MR. CHAIKEN: No. I said they'll accept a
22 subpoena for a Zoom deposition. But my concern is, is that
23 for whatever reason that they want a Zoom deposition, okay,
24 if there is a subpoena for some other deposition, okay,
25 they're going to go -- and they can, I guess, rely on Rule

1 45 and they can go quash it. And Rule 45 provides that the
2 Court, where compliance is required, you know, controls the
3 parameters of the deposition.

4 And I'm just trying to be mindful of the
5 overriding requirement of Rule 45, which is that witnesses
6 should not suffer undue burden and expense. And thus far,
7 man, this witness is incurring a lot of burden and expense.

8 But, you know, I don't have a problem with her
9 being deposed. I don't care if it's live or, you know, or
10 by Zoom. But her counsel, okay, has said and will only
11 agree to do it by Zoom so --

12 THE COURT: Mr. Chaiken, I cannot prevent her
13 counsel from filing a motion in the District of Columbia to
14 try to quash a subpoena.

15 What I am telling you is if this witness is going
16 to testify at trial, meaning voluntarily get on a plane,
17 come to Houston, and testify at your request, because she's
18 outside subpoena range, then Mr. Grosdidier is entitled to
19 depose her.

20 And I'm saying he's entitled to depose her in
21 person, barring one of you coming down with COVID and the
22 deposition being unable to go forward because of that.

23 If her counsel quashes the deposition, then I
24 guess she's not going to testify at trial. It seems --

25 MR. CHAIKEN: Well, I --

1 THE COURT: -- pretty simple to me.

2 MR. CHAIKEN: I think I -- well, I understand it.

3 But what you're really saying is, is that you're forcing me
4 to accept a subpoena for her. And I'm --

5 THE COURT: No. I'm --

6 MR. CHAIKEN: -- just not authorized to do that.

7 THE COURT: No. I am in no way forcing you to
8 accept a subpoena for her. Mr. Grosdidier can send the
9 subpoena to her counsel.

10 MR. CHAIKEN: That's fine. Whether that --
11 whether they accept it as appropriate service is --

12 THE COURT: This is a have your --

13 MR. CHAIKEN: So --

14 THE COURT: -- cake and eat it --

15 MR. CHAIKEN: I understand what you're saying
16 today. I understand what --

17 THE COURT: Okay.

18 MR. CHAIKEN: -- you're saying today. Okay. I'm
19 just -- you're -- I'm being put in a box that I can't
20 control. But that's fine, I get it.

21 THE COURT: I don't understand why this witness is
22 willing to come testify when she's not in subpoena range but
23 she's not willing to sit for a deposition.

24 MR. CHAIKEN: She is willing to sit for a
25 deposition. She just wants to do it by Zoom. That's the

1 only issue.

2 And every witness that Mr. Grosdidier has insisted
3 we depose by Zoom, we have deposed by Zoom, even when we've
4 wanted to take depositions live. So I'm just -- I'm, you
5 know, -- every single one of them. I -- there have been
6 witnesses that I preferred to depose live but I've been
7 asked to do it by Zoom, I've done it by Zoom.

8 MR. GROSDIDIER: Judge, if I may say --

9 MR. CHAIKEN: Including (indiscernible).

10 THE COURT: Yes, Mr. Grosdidier.

11 MR. GROSDIDIER: I have an email from Mr. Chaiken
12 who insists on being present physically in the room with the
13 witness during the deposition. So --

14 THE COURT: I know. But I think he's changed his
15 position on that since writing that email, correct?

16 MR. CHAIKEN: I've already said I'm not going to
17 be there.

18 THE COURT: Yeah. All right. Let's do this. If
19 her counsel -- look, serve the subpoena on her counsel. If
20 her counsel has an issue with the subpoena, I welcome him to
21 file a letter with this Court. Obviously he's entitled to
22 seek relief in the jurisdiction where the witness is.
23 That's what the rules provide for. He's certainly entitled
24 to that.

25 I am also saying that I believe the rules also

1 might allow him to file something here. But I will accept a
2 -- I will accept and entertain a letter from him which gives
3 me, you know, in which he discusses the issue between a Zoom
4 and a live deposition. And if we have to have a telephone
5 conference on that, I will do it. But --

6 MR. CHAIKEN: I will inform him of that, yes.

7 THE COURT: She's going to be deposed or she's not
8 going to testify.

9 MR. CHAIKEN: And, Judge, I just -- I'm saying it
10 again because I'm trying not to -- I'm just concerned, I
11 don't want anybody to say I waived -- I don't care if she's
12 deposed. I want her to be deposed, you know, under these
13 circumstances. He has a right to depose her.

14 All I am reporting to you is that she doesn't want
15 to be deposed live. And as a result of that, I have said I
16 will be available whenever she is. I won't be there and I
17 propose that Mr. Grosdidier not be there.

18 And the Court has already said if it's a Zoom
19 deposition, there are other parameters, which I have no
20 problem with.

21 I just don't understand why we're forcing a live
22 deposition of a witness whose testimony is more than likely
23 going to take no more than 30 or 40 minutes at great cost
24 and expense to everybody concerned. And that is what my --
25 is what I am trying to communicate here, maybe not as

1 effectively as I am trying to.

2 THE COURT: Well, for the --

3 MR. CHAIKEN: Why can't we just do it by Zoom and
4 get it done?

5 THE COURT: For the state of the Record, they're
6 all live depositions. You're talking about the difference
7 between an in-person deposition and a video Zoom deposition
8 or videoconference deposition.

9 And, look, we all did in-person depositions prior
10 to COVID. And there are people who believe there is a
11 substantive difference between their ability to get a good
12 deposition in-person versus by Zoom.

13 So subpoena the witness, serve the subpoena on her
14 counsel. If her counsel wants to take up the issue of Zoom
15 versus in-person, I will entertain a letter from him and
16 we'll have a telephone call about it. And, --

17 MR. CHAIKEN: Okay. Well, --

18 THE COURT: -- Mr. Grosdidier, you may -- I don't
19 know what the Court in D.C., I don't know what their local
20 rules are or anything else about Zoom depositions. But,
21 Mr. Grosdidier, it may come down to whether or not you want
22 to agree to a Zoom deposition or take the risk that the
23 Court in D.C. quashes the notice. So that's where we are.

24 I think it's -- I think we're -- we've resolved
25 the issues. But tell me if you're -- if there's something

1 else we haven't covered.

2 MR. CHAIKEN: Well, no, I just -- on this point,
3 because this is the first time we've really discussed the
4 Zoom versus live deposition issue, we have some depositions
5 noticed next week of Neal Rackleff (phonetic), and then we
6 have another deposition noticed after that for a gentleman
7 by the name of Mr. Bass, Jack Bass (phonetic). I want to
8 take their depositions live. If this is how we're going to
9 do it, then I want their depositions live.

10 I also want the City's Rule 30(b)(6) witnesses
11 live. I've been told I have to take them by Zoom. I want
12 them live. If this is what we're doing, --

13 THE COURT: Mr. Grosdidier, it's the goose/gander
14 rule. What's your objection to him taking those depositions
15 in-person as opposed to on Zoom?

16 MR. GROSDIDIER: Well, I'm going to have to look
17 into that because one witness is in the boondocks so it
18 would be a travel --

19 THE COURT: Well, --

20 MR. GROSDIDIER: -- issue to his place. But, --

21 THE COURT: If --

22 MR. GROSDIDIER: -- I mean, if he wants to make
23 him live, we can make him live.

24 THE COURT: There's a travel issue to D.C. also
25 for her counsel and for both of you. So, look, --

1 MR. GROSDIDIER: Yeah, if he wants to do it, I'll
2 make the arrangements.

3 THE COURT: All right. If you want your
4 depositions in-person, Mr. Chaiken, you can take them in-
5 person.

6 MR. CHAIKEN: Great. Well, I'd like
7 Mr. Grosdidier to give me a location for the depositions of
8 the Rule 30(b)(6) witnesses that --

9 THE COURT: You all can --

10 MR. CHAIKEN: -- we have scheduled for --

11 THE COURT: You all can do that when I'm not on
12 the telephone.

13 MR. CHAIKEN: Sure, okay, fair enough.

14 THE COURT: All right. Anything else?

15 MR. CHAIKEN: Nothing I have.

16 MR. GROSDIDIER: That's what I have. Thank you,
17 Judge.

18 THE COURT: All right. So I'm -- what am I doing
19 on these motions? I am -- I guess I am -- well, I'm denying
20 the second motion without prejudice to the issues being
21 raised before Judge Miller, you know, at the time of trial.

22 As to the first motion to exclude, I am not -- I
23 guess I'm denying it. I am not excluding her testimony.
24 But if she is going to voluntarily appear and testify at
25 trial, she must be deposed. So I'm denying 172 but ordering

1 that the witness be deposed if -- and that if Mr. Chaiken --
2 if the deposition does not go forward, Mr. Chaiken will not
3 be able to bring her to testify.

4 So I have to figure out exactly the procedural way
5 to deal with these motions, --

6 MR. CHAIKEN: I understand.

7 THE COURT: -- but that's where we are. All
8 right. Thank you, everyone.

9 MR. CHAIKEN: Can I -- one point of clarity, can I
10 get one point of clarity, Judge?

11 THE COURT: Yes.

12 MR. CHAIKEN: Forgive me, okay, because I don't
13 have this stuff pulled up right now. But you're referring
14 to a first and second motion to exclude. What is the docket
15 number of the second motion that I think you just said you
16 were denying?

17 THE COURT: Document Number 180. It's a motion to
18 exclude her based on the fact that she's really an expert.
19 And I'm not going to take that up because I don't know what
20 she's going to say or what she's going to testify about.

21 MR. CHAIKEN: Fair enough. I just wanted to make
22 sure I knew that so that I don't have to respond to it so --
23 I have not -- I haven't responded to it yet so -- but you're
24 denying it so I won't have to respond. And I --

25 THE COURT: I'm --

1 MR. CHAIKEN: -- appreciate the clarity.

2 THE COURT: -- denying it without prejudice to,
3 you know, some sort of future motion if it turns out she
4 does give expert testimony.

5 MR. CHAIKEN: My -- I understand what you're
6 saying. I just wanted to make sure I knew which one you
7 were talking about.

8 THE COURT: Got you.

9 MR. CHAIKEN: So forgive me for asking.

10 THE COURT: Okay. No problem.

11 MR. CHAIKEN: I just needed the -- okay.

12 THE COURT: No problem. Okay. I think we're
13 ready.

14 And my understanding is that Judge Miller has now
15 referred this case for all purposes; is that correct?

16 MR. CHAIKEN: I saw an order to that and I just --
17 since you're raising it, does -- I think the order -- does
18 the order require consent of both parties, though, for you
19 to try the case? I don't -- I'm not -- I just want to know
20 what the --

21 THE COURT: Yeah. So let me --

22 MR. CHAIKEN: -- requirements are.

23 THE COURT: Yeah, let me explain. Initially the
24 case was referred to me for a particular discovery dispute.

25 MR. CHAIKEN: Yes.

1 THE COURT: And we handled that discovery dispute.
2 And then after that I guess you all had another discovery
3 dispute. And at that point Judge Miller said, the whole
4 case is going to Judge Bryan for pretrial management. So
5 that's the referral referring the case for pretrial
6 management.

7 If the parties consent to trying the case before
8 me, both parties have to consent, then the case would be
9 before me for all purposes. But right now the case is
10 before me for pretrial management. And it would go back to
11 Judge Miller for trial.

12 MR. CHAIKEN: Understand. So may I ask one
13 question just so I understand the parameters?

14 THE COURT: Sure.

15 MR. CHAIKEN: Because I have to obviously report
16 to the client on this. So for pretrial management, does
17 that mean that if there was consent of the parties, you
18 would then also deal with dispositive motions or are you
19 just dealing with them in any event?

20 THE COURT: I'm going to -- unfortunately for me
21 I'm going to be dealing with them in any event because he is
22 -- it is my understanding, and if my law clerk's on the
23 line, I may ask him to tell me whether I'm correct, it's my
24 understanding that the case is referred for all pretrial
25 matters, which would include dispositive motions. Is that

1 correct, Mr. Wahrenbrock (phonetic)?

2 MR. WAHRENBROCK: Yes, that's correct.

3 THE COURT: All right. So, yes, I will be
4 handling --

5 MR. CHAIKEN: Okay.

6 THE COURT: -- the dispositive motions also.

7 MR. CHAIKEN: Okay. And so -- all right. So
8 you're handling all dispositive -- and so just last
9 question, just so I can get this right. I don't want to
10 mess up anything here.

11 So when a dispositive motion is considered by you,
12 if there is no consent -- no mutual consent, I'm sorry, to
13 trying the case as well, then do you report to the -- make a
14 recommendation or do you actually rule on the motion if
15 there hasn't been --

16 THE COURT: For --

17 MR. CHAIKEN: -- full referral.

18 THE COURT: For dispositive motions, if there's no
19 consent for me to have total jurisdiction of the case,
20 meaning no consent to try the case before me, my rulings on
21 dispositive motions are by memorandum and recommendation
22 which are then reviewed by the District Court and either
23 adopted, rejected, or adopted in part or rejected in part,
24 some, you know, some option like that.

25 MR. CHAIKEN: Yeah, okay, all right. I just want

1 to make sure I understand what the landscape looks like both
2 ways so that we can obviously make a fully informed decision
3 on that. So --

4 THE COURT: Yes.

5 MR. CHAIKEN: -- okay, great. Okay.

6 THE COURT: Think of the consent as --

7 MR. CHAIKEN: All right. Well, thank you for the
8 -- okay, I'm sorry.

9 THE COURT: Think of the consent as just granting
10 full Federal Court jurisdiction to me to try the case as an
11 Article Three judge would. And if you don't consent, then
12 everything that is normally -- all of the normal rules of
13 referrals apply, meaning magistrate judges issue orders on
14 any issue that is not dispositive and issue recommendations
15 on issues that are dispositive.

16 MR. CHAIKEN: Understood.

17 THE COURT: Okay?

18 MR. CHAIKEN: Got it.

19 THE COURT: Great.

20 MR. CHAIKEN: Yeah, perfect. My only concern is,
21 is your comment you said, unfortunately for you.

22 THE COURT: I was trying to be funny.

23 MR. CHAIKEN: No, I know you were, Judge, and I
24 was trying to be funny when I said it so --

25 THE COURT: The only part of the unfortunate is

1 that I just -- I have a lot of work so this is just
2 additional work. But, no, I should not have said that. It
3 was a joke and it was in poor taste.

4 MR. CHAIKEN: No, no, it was not, and it's fine.
5 And I just -- I was trying to -- I was just trying to add a
6 giggle to the -- to an otherwise giggle-less process here.
7 So --

8 THE COURT: Thank you. I appreciate that.

9 MR. CHAIKEN: Okay.

10 THE COURT: All right. If you have any other
11 issues, file a letter like we, you know, in accordance with
12 Judge Miller's procedures, and we will take care of them.

13 MR. GROSDIDIER: Yes, Judge, --

14 MR. CHAIKEN: Very well.

15 MR. GROSDIDIER: -- thank you for your time.

16 THE COURT: Thank you, everyone. Have a good day.

17 (Proceedings adjourned at 10:29 a.m.)

18 * * * * *

19 I certify that the foregoing is a correct
20 transcript to the best of my ability due to the condition of
21 the electronic sound recording of the ZOOM/video/telephonic
22 proceedings in the above-entitled matter.

23 /S/ MARY D. HENRY

24 CERTIFIED BY THE AMERICAN ASSOCIATION OF
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